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| 09/970,594 | 10/04/2001 | James A. Hellbusch | | 1193 |

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EXAMINER

MCKANE, ELIZABETH L

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| ART UNIT | PAPER NUMBER |
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1744

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/970,594

Applicant(s)

HELLBUSCH ET AL.

Examiner

Leigh McKane

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-7,9,12,13 and 15-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7,9,13 and 20-22 is/are rejected.
- 7) ☒ Claim(s) 12,15-19 and 23-25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1, 2, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morin (U.S. Patent No. 3,419,223) in view of Shearer (U.S. 6,165,323).

Morin teaches an apparatus including a hopper 78 having an interior compartment, a first

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opening (top of hopper) and a second opening (bottom of hopper), a receiving tank 80, and a screen 22 located therebetween. Hinge 12 permits rotation of hopper 78 relative to tank 80. However, it is deemed obvious that hinge 12 would also allow rotation of tank 80 relative to hopper 78. Furthermore, as screen 22 is disclosed to be movable, it would have been obvious to attach the screen to the apparatus by means of a suitable hinge, in order to prevent loss of the screen during cleaning. See Figures 1 and 4.

An elongated retaining pin 36 secures the hopper and receiving tank together.

Morin is silent with respect to secure the screen with a retaining pin but does teach the use of gibs 26 and blocks 20 secure the screen. Shearer teaches a hinged screen in a liquid-solid contact device wherein a removable retaining pin 37 secures the screen 31 in position. As Shearer teaches that securing the screens in a pivotal manner permits servicing of the apparatus without necessitating removal of the screens (col.4, line 64 to col.5, line 12), it would have been an obvious modification to the apparatus of Morin.

As to the second opening of the hopper and the first opening of the receiving tank being "adapted to be received by the collection bucket of a mobile vehicle," it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. It is submitted that the apparatus of Morin is certainly capable of being received by the collection bucket of a mobile vehicle.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morin and Shearer as applied to claim 1 above, and further in view of Read (U.S. Patent no. 5,082,555).

The apparatus of Morin fails to employ a hydraulic assembly for effecting movement of

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the hopper. However, Read discloses the known use of a hydraulic assembly 46 for effecting movement of cumbersome parts relative to one another. See col.4, lines 33-38. As use of hydraulic cylinders are commonly used for the movement of heavy parts, it would have been obvious in the apparatus of Morin.

6. Claims 7, 9, 13, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson (U.S. Patent No. 4,510,114).

With respect to claims 7 and 13, Nelson teaches a system including a hopper 284 having upper and lower ends, inner and outer surfaces, and forward and rearward sides. A receiving tank 294, having an open upper end, a closed lower end, and forward and rearward sides is in open communication with a lower end of the hopper. An elongated spray bar 286 located in an upper end of the hopper 284 oscillates about a longitudinal axis thereof and sprays fluid therefrom. Nelson is silent with respect to whether the receiving tank 294 has an opening formed at a lower end thereof. Regardless, as the ice formed by the device will need to exit tank 294 for eventual use, it is deemed obvious to provide an opening at a lower end thereof for gravity discharge. See Figure 27; col.15, lines 19-36.

As to claim 13, Nelson discloses that the spray bar is oscillated by "suitable drive means 288" (col.15, lines 22-25), it would have been obvious to use a motor as a well-known and suitable drive means.

With respect to claim 20, as to the lower end of the hopper and the upper end of the receiving tank being "adapted to be received by the collection bucket of a mobile vehicle," it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any

patentable sense. *In re Hutchison*, 69 USPQ 138. It is submitted that the apparatus of Prazmowski is certainly capable of being received by the collection bucket of a mobile vehicle.

7. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson in view of Reilly et al (U.S. Patent No. 5,775,237).

Nelson is silent with respect to an observation window formed on the outer surface of the hopper. Reilly et al, however, discloses the known use of observation windows 60 in hoppers for monitoring ash levels within each hopper. It would have been obvious to provide an observation window in the hopper of Nelson for the same reason – that is, to provide an indication of the ice level in the hopper.

8. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson in view of Neal et al (U.S. Patent No. 4,863,277).

Nelson is silent with respect to a float switch connected to the inner surface of the hopper. Neal et al discloses a blending system for fertilizer wherein a hopper 60 is filled with dry materials, the level of which is monitored and controlled by float level sensor 64. The level within hopper 18 is controlled by float 119. See col.1, lines 39-42; col.4, lines 6-13 and lines 66-67. As Neal et al teaches that the float switch prevents overfilling of the hopper, it would have been an obvious modification of Nelson.

Allowable Subject Matter

9. Claims 23-25, 12, and 15-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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10. The following is a statement of reasons for the indication of allowable subject matter: With respect to claim 23, there is no teaching or suggestion in Nelson to provide a spray bar having holes such that the distance between holes proximate the midpoint of the spray bar is smaller than the distance between the holes proximate the opposite ends of the spray bar. With respect to claims 24 and 12, there is no teaching or suggestion to provide a spray bar having holes of varying diameter with the claimed hopper. With respect to claims 25 and 15-19, the prior art of record fails to teach or suggest a pivotally movable receiving tank in combination with a hopper and rotatably mounted spray bar.

Response to Arguments

11. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.


Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 571-272-1275. The examiner can normally be reached on Monday-Thursday (5:30 am-2:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on 571-272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Leigh McKane
Primary Examiner
Art Unit 1744

elm
17 October 2005